

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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JUSTIN BOYKO, :  
Plaintiff, :  
: No.  
v. :  
MONTGOMERY WARD, INC., :  
Defendant. :  
:

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**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, Defendant Montgomery Ward, Inc. (“Montgomery Ward” or “Defendant”), hereby removes the above-entitled matter to this Court from the Court of Common Pleas of Lackawanna County, Pennsylvania, where it is currently pending at No. 16-CV-5473, based upon the following:

1. Plaintiff Justin Boyko (“Plaintiff”) commenced this action in the Court of Common Pleas of Lackawanna County, Pennsylvania by filing a Complaint for Damages on September 27, 2016, a true and correct copy of which is attached hereto as **Exhibit A**.
2. The Complaint was received by Defendant on October 3, 2016.
3. This Notice of Removal is timely-filed pursuant to 28 U.S.C. § 1446(b) because it is filed within 30 days of October 3, 2016.

4. To date, no further pleadings have been filed and no further proceedings have occurred in the Court of Common Pleas of Lackawanna County litigation.

**FACTUAL ALLEGATIONS OF THE COMPLAINT**

5. Plaintiff brings this action pursuant to the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 et seq., and federal Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1691. *See* Complaint at ¶¶ 25-31.

6. Plaintiff alleges that Defendant called him “numerous” times on his cellphone using an autodialer without first obtaining his permission to do so. *See id.* at ¶¶ 10-12.

7. Plaintiff alleges that these telephone calls violated the TCPA because they were made to Plaintiff’s cellphone without his permission. *See id.* at ¶¶ 13, 15, 26.

8. Further, Plaintiff alleges that these telephone calls violated the FDCPA because their natural consequence was to harass, oppress or abuse Plaintiff in connection with the collection of a debt. *See id.* at ¶ 30.

**REMOVAL IS PROPER UNDER 28 U.S.C. §§ 1331, 1441 and 1446**

9. Under 28 U.S.C. § 1331, United States District Courts are vested with jurisdiction to consider cases or controversies “arising under” the laws of the United States of America. *See* 28 U.S.C. § 1331.

10. Removal of such cases is governed by 28 U.S.C. § 1441(b). Section 1441(b) makes clear that a case brought in state court, raising a federal question, “shall be removable” to the United States District Courts “without regard to the citizenship or residence of the parties.” *See* 28 U.S.C. § 1441(b) (emphasis added).

11. Moreover, section 1441(c) provides that, when a case raises a claim “arising under” federal law and an otherwise non-removable claim, the “entire case may be removed.” *See* 28 U.S.C. § 1441(c).

12. Here, Plaintiff’s Complaint purports to assert a claim under the federal TCPA and federal FDCPA.

13. These claims allege violations of federal statutes and consequently “arise under” the laws of the United States. *See* 28 U.S.C. § 1331. Therefore, this Court may properly exercise jurisdiction over this case.

14. Given that the requirements for federal question jurisdiction are satisfied, this case is properly removed.

15. Removal to this Court is proper under 28 U.S.C. § 1441(a) because this is a civil action initiated in a state court over which the district courts of the United States have original jurisdiction pursuant to 28 U.S.C. § 1331 and this District Court embraces the place in which the action is pending.

16. Venue is proper in this Court because it is the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

**ALL PAPERS, PLEADINGS AND ORDERS SERVED ON  
MONTGOMERY WARD ARE ATTACHED AND A NOTICE OF  
REMOVAL IS BEING FILED WITH THE STATE COURT**

17. Written notice of the filing of this Notice of Removal, together with a copy of this Notice of Removal and all attachments, will be promptly served upon all parties and filed with the Prothonotary of the Lackawanna County Court of Common Pleas, Scranton, Pennsylvania, in accordance with 28 U.S.C. § 1446(d).

18. No admission of fact, law or liability is intended by this Notice of Removal, and Montgomery Ward expressly preserves all of its defenses, denials and/or objections to Plaintiff's Complaint and each and every allegation thereof.

**WHEREFORE**, Defendant Montgomery Ward requests that the above-captioned action be removed from the Court of Common Pleas, Lackawanna County, Pennsylvania, to the United States District Court for the Middle District of Pennsylvania, and that all further proceedings in this action be held before this Court.

Respectfully submitted,

s/ Robert E. Warring  
Robert E. Warring  
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*Attorneys for Defendant  
Montgomery Ward, Inc.*

Dated: November 2, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2nd day of November, 2016, I caused a true and correct copy of the foregoing Notice of Removal to be served by regular U.S. mail upon the following:

Joseph T. Sucec, Esquire  
325 Peach Glen-Idaville Road  
Gardners, PA 17324

s/ Robert E. Warring  
Robert E. Warring